

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 2 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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BACCAROSE PERFUMES AND BEAUTY PPRODUCTS LTD.

Versus

GEEKAY EXIM (INDIA) LTD.

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Appearance:

MR KETAN D SHAH for Petitioner

MR SANJAY M AMIN for Respondent No. 1

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CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 01/04/98

ORAL JUDGEMENT

1. Heard Ld.Advocate Mr.Ketan Shah with Mr.Tushar Mehta appearing for petitioner, Mr.Sanjay Amin appearing for respondent Nos 1 to 11 and Ld.APP--Mr.A.J.Desai for respondent No.2-State.
2. The petitioner has challenged the legality and propriety of the order passed by the Ld.JMFC, Gandhidham,

Dist.Kutch-Bhuj dated 6.12.1997 below Appln.Exhs 34, 35 & 38 in the proceedings of Cri.Case No.2052/96.

3. The petitioner has filed Cri.Case No.2052/96 against the present respondent Nos 1 to 11 for having committed offence under section 138 of Negotiable Instruments Act. That on service of summons present petitioner as accused of the said case had appeared before the Ld.JMFC and had from time to time prayed for exemption from remaining present personally in the court. It appears that vide application Exh 34 the petitioner as a complainant of the said case requested the court to issue nonbailable warrant against present respondents as the respondents have never appeared before the court despite directions given to the advocate on earlier date. That thereafter on subsequent date application-Exhs 35 & 38 are also moved to claim similar reliefs. That vide impugned order the Ld.JMFC has rejected the said application and has recorded the plea of the present respondent as accused through their advocate and has granted permanent exemption to the respondent till further order.

4. Ld.Advocate Mr.Ketan Shah with Mr.Tushar Mehta appearing for petitioner has read all the applications and the orders of the trial court and has contended that the Ld.JMFC has committed error by reviewing the earlier order whereby the Ld.JMFC has directed the advocate of the petitioner to keep the present petitioner present in the court on the next date for the purpose of recording the plea.

5. It may be noted that the trial court has followed the decision of this court reported vide 95(2) GLH(UJ) 7 and 86 GLH 166. Relying on the said observations the trial court has rejected the application for issuing nonbailable warrant against the present petitioner in the said criminal case and has granted permanent exemption from remaining present.

6. On perusal of the order it appears that the trial court has not committed any jurisdictional error nor has committed any procedural irregularity resulting into miscarriage of justice. Grant or refusal of exemption under section 205 or 317 of Cr.P.C. is a matter of discretion of the presiding officer of the court depending upon the facts and circumstances involved in the matter. In the present case the trial court appears to have appreciated the facts and circumstances involved in the matter and rightly exercised the discretion while passing the impugned order and as such I hold that no

interference in the said order is warranted. However, the trial court is directed to proceed further with the matter and to dispose it of as expeditiously as possible if the present petitioner as a complainant produces evidence on due date.

7. On the above stated discussion, petition fails and rule is discharged. No costs.

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